

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WARREN E. BELL,

Petitioner,

v.

DAN PACHOLKE,

Respondent.

CASE NO. C07-1936-RAJ-MJB

ORDER DISMISSING § 2254 PETITION

This matter comes before the court on Petitioner's filing a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Having considered the Report and Recommendation of the Honorable Monica J. Benton, United States Magistrate Judge, and Petitioner's objections thereto, and the balance of the record, the court hereby ORDERS that petitioner's § 2254 petition (Dkt. # 1) is DISMISSED without prejudice.

In order to present a claim to a federal court for review in a habeas corpus petition, a petitioner must first have exhausted the remedies available in state court. *See* 28 U.S.C. § 2254(b)(1). The exhaustion requirement has long been recognized as "one of the pillars of federal habeas corpus jurisprudence." *Calderon v. United States Dist. Ct. (Taylor)*, 134 F.3d 981, 984 (9th Cir.) (citations omitted), *cert. denied*, 525 U.S. 920 (1998). The exhaustion requirement is satisfied if the petitioner has provided the highest state court the opportunity to rule on the merits of the claim, or if the petitioner shows that at the time the petition was filed in federal court, no state remedies were still available to the petitioner and that the petitioner had not deliberately by-passed state


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1 remedies. *Batchelor v. Cupp*, 693 F.2d 859, 862 (9th Cir. 1982).

2 At the time Petitioner filed his petition, he had a personal restraint petition pending in the
3 Washington Court of Appeals. The personal restraint petition has since been dismissed, and
4 Petitioner may appeal that dismissal to the Washington Supreme Court by a motion for discretionary
5 review. *See* Wash. R. App. P. 16.14(c). Such an appeal is necessary before petitioner's state
6 remedies are considered exhausted. *See Batchelor*, 693 F.2d at 863.

7 For these reasons, Petitioner's § 2254 petition (Dkt. # 1) is DISMISSED without prejudice to
8 refiling once all state court post-conviction challenges to Petitioner's conviction have been exhausted.

9 DATED this 5th day of February, 2008.

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12 The Honorable Richard A. Jones
13 United States District Judge
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